



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0092]

RIN 1625-AA87

Security Zone, East River and Bronx Kill; Randalls and Wards Islands, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on the waters of the East River and Bronx Kill, in the vicinity of Randalls and Wards Islands, New York. This security zone is necessary to ensure the safety of the President of the United States, members of his official party, and other senior government officials. The zone is intended to restrict vessels from a portion of the East River and Bronx Kill when public officials are scheduled to arrive and depart the area. Persons or vessels may not enter this security zone without permission of the Captain of the Port New York (COTP) or the COTP's designated on-scene representative.

DATES: This rule is effective from 4 p.m. until 11:30 p.m.

on Thursday, March 1, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2012-0092 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0092 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Mr. Jeff Yunker, Waterways Management Division, Coast Guard Sector New York; telephone 718-354-4195, e-mail Jeff.M.Yunker@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative

Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because specific information regarding the event was not received in time to publish a NPRM and seek comments before issuing a final rule before the effective date. Publishing an NPRM and delaying the effective date would be contrary to the public interest since the occasion would occur before a notice and comment rulemaking could be completed, thereby potentially jeopardizing the safety of the President of the United States, members of his official party, and other senior government officials.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register for the reasons in the preceding paragraph.

Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1226 and 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191,

195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish security zones.

The United States Secret Service requested that the Coast Guard establish a security zone on the waters of the East River and Bronx Kill during the arrival and departure of the President of the United States to and from Randalls and Wards Islands, New York. The purpose of the temporary security zone is to facilitate the security and safety of the President of the United States during his visit to New York City.

Discussion of Rule

The temporary security zone is effective on March 1, 2012, from 4 p.m. until 11:30 p.m. The security zone is located on a portion of the East River and the Bronx Kill. The East River security zone is approximately 1,500 yards to 2,150 yards long and 290 yards to 860 yards wide. The Bronx Kill security zone is approximately 430 yards long and 30 yards to 340 yards wide. Specific geographic locations are specified in the regulatory text. Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Regulatory Analyses

We developed this rule after considering numerous

statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, as supplemented by Executive Order 13563, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This determination is based on the limited time that vessels will be restricted from the zone. The temporary security zone will only be in effect for less than eight hours on March 1, 2012. The Coast Guard expects minimal adverse impact to mariners from the zone's activation based on the limited duration of the enforcement period, the limited geographic area affected and because affected mariners may request authorization from the COTP or the designated on-scene representative to transit the zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a

significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the East River or Bronx Kill, in the vicinity of Randalls or Wards Islands, NY, during the effective period.

This temporary security zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The security zone is of limited size and duration. Persons or vessels may request permission to transit the security zone from the COTP or the designated on-scene representative.

Additionally, before and during the effective period, the Coast Guard will issue maritime advisories widely available to users of the waterway, including verbal broadcast notice to mariners and distribute a written

notice to waterway users online at
<http://homeport.uscg.mil/newyork>.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have

determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves establishment of a temporary security zone on a portion of the East River and Bronx Kill during the arrival and departure of the President of the United States to and from Randalls and Wards Islands. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine security, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01-0092 to read as follows:

§ 165.T01-0092 Security Zone, East River and Bronx Kill; Randalls and Wards Islands, NY

(a) Location. The following area is a temporary security zone: All waters of the East River between the Hell Gate Rail Road Bridge (mile 8.2), and a line drawn from a point at approximate position 40° 47' 27.12"N, 073° 54' 35.14"W (Lawrence Point, Queens) to a point at approximate position 40° 47' 52.55"N, 073° 54' 35.25"W (Port Morris Stacks), and all waters of the Bronx Kill southeast of the Bronx Kill Rail Road Bridge (mile 0.6).

(b) Definitions. For purposes of this section "Designated on-scene representative" is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on the COTP's behalf.

(c) Effective period. This section is effective from 4 p.m. until 11:30 p.m. on March 1, 2012.

(d) Regulations. (1) All persons are required to comply with the general regulations governing security zones found in 33 CFR 165.33.

(2) Entry, transit, or anchoring within the security zone described in paragraph (a) of this section is prohibited unless authorized by the COTP or the COTP's designated representative. The designated on-scene representative may be on a Coast Guard vessel, or onboard a federal, state, or local agency vessel that is authorized to act in support of the Coast Guard.

(3) The COTP will provide notice of this security zone by appropriate means, which may include but are not limited to a Local Notice to Mariners or Broadcast Notice to Mariners.

(4) Vessel operators given permission to enter or operate in the security zone must comply with all directions given to them by the COTP or the designated on-scene representative. Those vessels may be required to anchor or moor up to a waterfront facility.

(5) Vessel operators desiring to enter or operate within the security zone shall telephone the COTP at 718-354-4356 or the designated on-scene representative via VHF

channel 16 to obtain permission to do so.

Dated: February 14, 2012

G. P. Hitchen
Captain, U.S. Coast Guard
Acting Captain of the Port New York

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